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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,297	06/20/2001	Everett Lee Mitchell	3374-4-1-1	8096
22442	7590	06/30/2004	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,297

Applicant(s)

MITCHELL, EVERETT LEE

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 56-89 and 104-112 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 56-64, 67-74, 76, 79-85, 87 and 104-112 is/are rejected.
- 7) ☒ Claim(s) 65, 66, 75, 77, 78, 88 and 89 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/31/04 has been entered.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 56-89, 104-112 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 5916100, claims 2-10 of U.S. Patent No. 6082064. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claimed limitations are claimed in the claims 1-19 of Patent 5916100 and claims 2-10 of Patent 6082064.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 56-60, 62-64, 67-74, 79-85, 87, 104, 106-108, 110-112 are rejected under 35

U.S.C. 102(b) as being anticipated by Ting (4840004).

Ting (figure 2) shows a wall system having at least a first perimeter framing member (19), at least a second perimeter framing member (18, 46), the first and second perimeter framing members engage one another (through the seals 23), wherein at least one of the first and second perimeter framing members defining a recess extending inwardly relative to exterior surfaces of the first and second panels (17), at least one of the first and second perimeter framing members having a plurality of drainage holes (37), the plurality of drainage holes being in fluid communication with a gutter (28) located in an interior region behind the first and second panels and the first and second perimeter framing members, the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment located exteriorly of the first and second framing members and first and second wall panels, a capillary break (the part on left and below holes 37) positioned on at least one of the framing members, the break is spaced from the plurality of drainage holes and along with the surfaces of the recess defining a circulating chamber (the area defined by 31, and the space on the right side of part 30), whereby entry of terrestrial fluids into at least one of the plurality of holes is impeded, the plurality of drainage holes being located above the free end of the break, the capillary break extends downwardly from the at least one of the first and second perimeter framing members, a first space between a free end of the capillary break and an opposing wall of the recess having a first vertical cross section area and a second spaced between opposing walls

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of a recess at a point between the break and the plurality of holes having a second vertical cross-sectional area and the second vertical cross sectional area is at least about 150% of the first vertical cross sectional area (the distance between the tip of the $\frac{1}{2}$ arrow and the opposing surface), at any location along the break, an adjacent edge of a nearest drainage hole(32, 35) is at least about 0.25 inch from a rear surface of the break (30), the centers of the plurality of drainage holes (37) lie along a common axis and wherein a distance of the holes above a free end of the break is at least about 125% of a distance from the free end of the break to an adjacent, opposing surface of the recess, the plurality of drainage holes are spaced at regular intervals along the at least one of the first and second framing members, a height of the break (30) ranges from about 125 to about 200% of a distance between a free end of the break and an adjacent, opposing surface of the recess, the holes(37) are located on one of the first and second members and the break (30) is located on the other of one of the members, the opening of the holes (37) being located on an at least substantially horizontal surface, the recess having a sloped lower surface (the surface to the left of 35) to permit terrestrial fluids in the chamber to flow along the surface and into the exterior environment and an adjacent edge of a nearest drainage hole being at least about 0.75 inch from the rear surface of the break, a surface of the break adjacent to the plurality of drainage holes being concave (the surface around holes 37) and the first and second wall panels being a composite of metal and plastic, at least most of the fluids pass along the lower surface through the gap and into the terrestrial environment, at least most the fluids do not pass through a gutter during the passing step, the break and the drainage holes being located on a common side of the chamber.

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3. Claims 56, 61, 67, 69, 79-80, 104-112 are rejected under 35 U.S.C. 102(b) as being anticipated by Ting (5452552).

Ting (figure 2a) shows a wall system having at least a first perimeter framing member (21), at least a second perimeter framing member (15,23), the first and second perimeter framing members engage one another (through the seals 28), wherein at least one of the first and second perimeter framing members defining a recess extending inwardly relative to exterior surfaces of the first and second panels (74,71), at least one of the first and second perimeter framing members having a plurality of drainage holes (68,38), the plurality of drainage holes being in fluid communication with a gutter (39 and the area to the right) located in an interior region behind the first and second panels and the first and second perimeter framing members, the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment (27) located exteriorly of the first and second framing members and first and second wall panels, a capillary break (34) positioned on at least one of the framing members, the break is spaced from the plurality of drainage holes and along with the surfaces of the recess defining a circulating chamber (26), whereby entry of terrestrial fluids into at least one of the plurality of holes is impeded, the plurality of drainage holes being located above the free end of the break (34), the break extending downwardly from the at least one of the first and second perimeter framing members, the recess having a downwardly sloped lower surface (23) to permit terrestrial fluids in the chamber to flow along the lower surface and into the exterior environment and wherein an adjacent edge of a nearest hole is at least about 0.75 inch from a rear surface of the break, a surface of the break (24) adjacent to the drainage holes (38) is concave (form by the vertical and the lower curve flange) and wherein the first and

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second wall panels each is a composite of metal and plastic, the plurality of holes being located on the first perimeter framing member, the openings of the drainage holes being located on an at least substantially vertical surface (at 38) and the openings of the plurality of holes being located above a free end of the break (the free end of the flange at the middle of the break 15, 24), the break having a height and is separated by a gap from the first framing member and the height is at least about 100% of the width of the gap and the exterior surfaces of the first and second wall panels being at least substantially parallel and coplanar, the lower surface of the chamber being free of drainage holes, at least most of the fluids pass along the lower surface through the gap and into the terrestrial environment, at least most the fluids do not pass through a gutter during the passing step, the break and the drainage holes being located on a common side of the chamber.

Allowable Subject Matter

3. Claims 65-66, 75, 77-78, 86, 88-89 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: prior art does not show the drainage holes being above the free end of the capillary break, the break extending downwardly from the at least one of the first and second perimeter framing members, and the holes being located on one of the first and second perimeter framing members and the break being located on the other of the first and second perimeter framing members in combination with other claimed limitations.

Response to Arguments

Applicant's arguments filed 10/15/03 to claims 56-89, 104-112 have been fully considered but they are not persuasive.

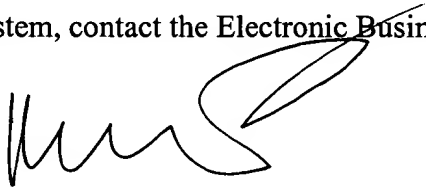
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different curtain wall designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

6/24/04